

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

HUONG HOANG, an individual,

Plaintiff,

vs.

AMAZON.COM, INC., a Delaware
corporation, and IMDB.COM, INC., a
Delaware corporation,

Defendants.

NO. 11-cv-01709-MJP

**PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

NOTE ON MOTION CALENDAR:
January 4, 2013

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

The Internet Movie Database (IMDb) promises in its agreement that users “will always receive notice when information about you might go to third parties, and you will have an opportunity to choose not to share the information.” Relying on that promise, actress Junie Hoang agreed to IMDb’s terms and, as IMDb required, she disclosed her private credit-card information. But IMDb did not comply with its own agreement. Instead, it misappropriated Hoang’s private credit-card information and publicly posted her age on IMDb’s website—without giving her notice or obtaining her consent. Now, casting directors know that Hoang is over 40, and her career is damaged. IMDb’s disclosure violated its privacy-policy agreement and Washington’s Consumer Protection Act. These facts are undisputed. Thus, the Court should grant summary judgment in Hoang’s favor on both claims.

II. FACTS

A. **Junie Hoang is an actress who routinely plays roles younger than her actual age.**

Huong Thu Hoang is an actress. Because her name is difficult to pronounce, she uses “Junie” in both her personal life and professional career. (December 10, 2012 Declaration of Keith Scully (“Scully Decl.”) at Ex. C, July 26, 2012 Deposition of Huong Hoang (the “7/26/2012 Hoang Dep.”) at 134:5-136:3.) Hoang estimates that before this lawsuit only five people other than her immediate family, government agencies, and payroll companies knew her legal name. (*Id.* at 134:5-141:21.)

Hoang looks much younger than her actual 41 years. So she plays only younger-aged characters. (*See* 7/26/2012 Hoang Dep. at 166:18, 167:6, 242:2-9.) Her agent routinely submits her for characters with ages ranging from 18-32. (Scully Decl. at Ex E, Deposition of Joe Kolkowitz (the “Kolkowitz Dep.”). at 33:2-5.) Before IMDb published her actual age on IMDb’s website, Hoang’s career was taking off. (December 10, 2012 Declaration of Huong Hoang (“Hoang Decl.”) ¶ 2.) Her work increased dramatically after a 2007 move from Texas to Los Angeles, and her earnings went up 195% during just her

1 second year in Hollywood. (Hoang Decl. ¶ 2.)

2 **B. Age discrimination is normal in Hollywood.**

3 Most working actors are not highly paid. (December 8, 2012 Declaration of Joe
4 Kolkowitz (the “Kolkowitz Decl.”) at ¶ 3.) And unfortunately for actors who spend years
5 building their careers, youth is king in the entertainment industry. (Kolkowitz Decl. at ¶
6 5.) There are far fewer characters over age 40 than there are younger roles. (Kolkowitz
7 Decl. at ¶ 5.) Even older characters are regularly played by younger actors. (Kolkowitz
8 Decl. at ¶ 5.) The problem is especially severe for women. (Kolkowitz Decl. at ¶ 6.)
9 There are few “character” roles for female performers in their 40s and 50s because roles
10 for women are generally for the young. (Kolkowitz Decl. at ¶ 6.)

11 Casting directors usually go through hundreds or thousands of resumes and
12 headshots when considering who to call for an audition. (Kolkowitz Decl. at ¶ 7;
13 Kolkowitz Dep. at 14:21-15:8.) If an actress’s actual age is available, casting directors
14 routinely reject actresses based on their age even if they appear young. No matter how
15 they look, an actress in her 40s simply won’t get as many auditions for younger roles—or
16 any roles—as an actress in her 20s or 30s. (Kolkowitz Decl. at ¶ 8.)

17 And Hoang’s youthful appearance—combined with her actual age—places her in
18 an acting-industry Catch 22. (Hoang Decl. at ¶ 3.) When a casting director knows her real
19 age, she is not cast for the role. (Kolkowitz Decl. at ¶ 8; Hoang Decl. at ¶ 3.) But when
20 she does audition for roles that are near her age, casting directors reject Hoang for
21 looking too young. (Kolkowitz Dep. at 33:3-8; 7/26/2012 Hoang Dep. at 199:9-19.)

22 So Hoang never tells anyone other than close friends and family her actual age—
23 and does not disclose it on her personal website, resume, or professional correspondence.
24 (Hoang Decl. at ¶ 4; 7/26/2012 Hoang Dep. at 84:2-23.) When asked her age socially or
25 as part of an audition, she either doesn’t answer or responds that she is “in her 30s.”
26 (7/26/2012 Hoang Dep. at 162:4-163:3.) When her own agent asked, Hoang initially
27 evaded the question, telling him only that she “play[s] in my 20s or 30s” on screen.
28 (7/26/2012 Hoang Dep. at 166:24-167:12.)

Hoang's caution extends to every aspect of her life. She opts out of posting her birthdate on any social networking sites—like Facebook. (7/26/2012 Hoang Dep. at 158:5-9.) Where she is required to disclose a birth date to use a service, she generally uses an obviously fictitious entry, for example claiming she was 99 on her MySpace page. (7/26/2012 Hoang Dep. at 158:15-159:3.) She avoids joining any publicly-available group that would allow someone to deduce how old she is, such as a high-school class networking site. (7/26/2012 Hoang Dep. at 159:17-21; Hoang Decl. at ¶ 4.)

Even IMDb was unable to obtain Hoang's birth date until it promised her that IMDb would maintain her personal information in confidence. In 2008, IMDb searched for Hoang's birth date using publicly-available sources, but was unsuccessful in finding it. (Scully Decl. at Ex F, August 1, 2012 Deposition of Giancarlo Cairella (the "Cairella Dep.") at 40:16-22.) Her own agent testified that he "never would have thought" Hoang was 40, instead assuming she was in her 30's. (Kolkowitz Dep. at 32:5-7.)

C. When IMDb discloses a birth date, Hollywood knows it.

IMDb claims it is "the world's largest online database" "of information about the film and television industry, including, without limitation, actors, directors, and crew members." (Dkt. 15 at 4:18-23.) IMDb also concedes that the database "is a handy tool for employers in the entertainment industry to search resumes, and up-and-coming entertainment professional [sic] rely on exposure by IMDb.com to seek employment opportunities in the entertainment industry." (Dkt. 15 at 4:24-29.) Casting directors and talent agents routinely use IMDb to learn about an actor before an audition, and in making casting decisions. It is "the bible of the industry. It's the number one reference tool." (7/26/2012 Hoang Dep. at 119:3-4.)

IMDb also offers a subscription service—IMDb Pro—that it advertises as "[a]n inside view of the entertainment world" that provides "[a]ll the industry information you need at your fingertips." (Hoang Decl. ¶ 23, Ex. I-1.) IMDb claims that "[y]our IMDb page is your industry calling card. Put your best face forward." (*Id.*) IMDb Pro features job listings, company contact information, and a "people database" for movie-industry

1 professionals. (*Id.*)

2 IMDb offers a “STARMeter” for each performer that goes up or down based upon
3 the frequency that users search for the performer. (Hoang Decl. ¶ 23, Ex. I-2.) IMDb is
4 so important that some casting directors only audition actors with a particular star rating.
5 And having a movie credit on IMDb is so vital to actors that some accept a credit on
6 IMDb as their only compensation for acting in a movie. (Scully Decl. at Ex D, August 7,
7 2012 Deposition of Huong Hoang (the “8/7/2012 Hoang Dep.”) at 511:21-512:5; Hoang
8 Decl. ¶¶ 5-6, Exs. A, B-1, and B-2.)

9 IMDb does not post complete information about each actor. (Hoang Decl. ¶ 7.)
10 Some IMDb profiles include an actor’s purported age, while others do not. (Hoang Decl.
11 ¶ 7; *see Id.* Exs. C-1–C-3.) But since IMDb is so popular, when IMDb posts an over-40
12 age for an actress, she has a disadvantage to an actress over 40 whose age does not appear
13 on the database. (Hoang Decl. at ¶ 8; Kolkowitz Decl. at ¶ 8.)

14 And IMDb gathers most data from Internet users, without regard to the
15 information source—IMDb does not verify if it is the performer, an agent, a fan, or
16 someone with a grudge making up false information. (*See* Cairella Dep. at 12:7-13,
17 13:23-14:1.) IMDb claims that some information is “double-checked”. But it
18 automatically approves information from a user with a “good reputation”. (Cairella Dep.
19 at 12:14-14:8.) And “double checking” just means that IMDb either searches on Google,
20 or relies on “common sense” as to whether the information is credible. (*Id.* at 15:9-16:6.)

21
22 **D. Hoang submitted personal information to IMDb because it promised to keep
her information secret.**

23 IMDb’s relationship with users like Hoang is governed by terms of service that it
24 wrote, including a “Privacy Notice” expressly incorporated by reference into IMDb’s
25 terms of service detailing how IMDb manages personal information. (Hoang Decl. at ¶ 9,
26 Exs. D-1, D-2, and D-3; Scully Decl. at Ex. G, August 2, 2012 30(b)(6) deposition of
27
28

1 Giancarlo Cairella (“Cairella 30(b)(6) Dep.”) at Ex. 3(IMDb’s terms of service and
 2 privacy notice are collectively referred to as the “Agreement” hereafter.).¹ The
 3 Agreement provides that “you will always receive notice when information about you
 4 might go to third parties, and you will have an opportunity to choose not to share the
 5 information.” (Hoang Decl. at ¶ 9, Ex. D-2 at 1.) It further provides that “You can choose
 6 not to provide certain information, but then you might not be able to take advantage of
 7 many of our features.” (*Id.*)

8 The Agreement carefully provides when IMDb will share information:

9 **Does IMDb Share the Information It Receives?**

10 Information about our users is an important part of our business, and we are
 11 not in the business of selling it to others. ... We share user information with
 12 our parent corporation (Amazon.com, Inc.), the subsidiaries it controls, and
 13 as described below.

14 (Cairella 30(b)(6) Dep. at Ex. 3.) IMDb limits the occasions when it claims it will
 15 share information outside of IMDb and Amazon to a narrow range of circumstances:

- 16 • Affiliated businesses to provide joint offers.
- 17 • Marketing agents to send advertisements.
- 18 • IMDb’s successors in interest, if IMDb is sold.
- 19 • Law enforcement, fraud protection, and court orders.

20 (*Id.*) IMDb confirms that “[o]ther than as set out above, you will always receive
 21 notice when information about you might go to third parties, and you will have an
 22 opportunity to choose not to share the information.” (*Id.*) IMDb also explains why it
 23 collects and maintains information provided by users: “We use the information that you
 24 provide for such purposes as responding to your requests, customizing future browsing
 25 for you, improving our site, and communicating with you.” (*Id.*)

26 ¹ IMDb Copyright and Conditions of Use and the related IMDb Pro service have separate
 27 although functionally identical terms of service, each of which incorporates the Privacy Notice.
 28 (Hoang Decl. ¶ 9, Exs. D-1 at 2 and D- 3 at ¶ 3; Cairella Dep. at Ex. 3.)

1 Knowing that information on IMDb's database—as opposed to IMDb's internal
 2 records—is public, Hoang initially did not provide a birth date for her profile. (Hoang
 3 Decl. ¶ 10.) Later, Hoang entered a 1978 birth date as an attempt to “flesh out” her acting
 4 persona's biographical details. (7/26/2012 Hoang Dep. at 255:2-10.)

5 In 2004, Hoang subscribed to IMDb Pro because it allowed her to contact other
 6 performers and see STARMeter rankings. (7/26/2012 Hoang Dep. at 122:7-125:20.)
 7 Although the subscription was free to try, IMDb required her to provide credit-card
 8 billing information. (Hoang Decl. ¶ 11.) During registration, IMDb informed Hoang that
 9 “IMDb knows that you care how information about you is used and shared, and we
 10 appreciate your trust that we will do so carefully and sensibly.” (Hoang Dep. at Ex. D-2
 11 at 1.) Based upon that guarantee, and believing in the Agreement's plain language that
 12 she could “choose not to share” information “that might go to third parties,” Hoang
 13 agreed to IMDb's terms. (Hoang Decl. ¶ 12.) As IMDb required, she submitted her full
 14 legal name—Huong Thu Hoang—together with her address and credit card number.
 15 (Scully Decl. at Ex. B, excerpts from IMDb's second supplemental answers to
 16 interrogatories (“IMDb's Ans. to 1st ROGS”) at 9:47-51; *see* Cairella 30(b)(6) Dep. at
 17 37:19-24.)

18 **E. IMDb used Hoang's confidential and personal information to research and**
 19 **publish her birth date without asking Hoang's permission, and then denied**
 20 **these facts to this Court.**

21 Rethinking her decision to enter an incorrect birth date, in 2007 and 2008 Hoang
 22 repeatedly asked IMDb to remove the information and leave her age unknown like other
 23 performers listed in the database. (*See* IMDb's Ans. to 1st ROGS at 7:40-48; Hoang Decl.
 24 at ¶ 14, Exs. E-1—E-12.) But instead, IMDb searched for Hoang's legal name and
 25 personal information in their confidential payment records. (Cairella 30(b)(6) Dep. at
 26 31:15-32:16, 36:12-16; Cairella Dep. Ex. 7; Scully Decl. at Ex. J, August 3, 2012 of
 27 Thomas Whitcomb (the “Whitcomb Dep.”) at 10:2-17.) IMDb then obtained Hoang's birth
 28 date by using her publically-unknown legal name to conduct a paid search on a restricted
 database called PrivateEye.com. (Cairella Dep. at 46:7-47:17, 58:25-59:9, Ex. 6; IMDb's

1 Ans. to 1st ROGS at 8:38-45.) IMDb never notified Hoang that it conducted this search.
 2 (Cairella 30(b)(6) Dep. at 39:6-14.) And even though it knew Hoang objected to IMDb
 3 sharing her personal information, IMDb published Hoang's age on her IMDb profile—
 4 violating PrivateEye.com's express terms of service in the process by publishing
 5 information from PrivateEye.com's database. (Hoang Decl. at ¶ 15, Ex. H.)

6 Defendants falsely told this Court that they did not use Hoang's payment
 7 information to obtain Hoang's birth date and update the IMDb website. (*Compare* Dkt.
 8 No. 15 at 7:15-26 and 11:27-35, *with* Cairella 30(b)(6) Dep. at 31:15-32:16, 36:12-16;
 9 Cairella Dep. at 46:7-47:17, 58:25-59:9, Whitcomb Dep. at 10:2-17.) In Defendants'
 10 motion to dismiss, Defendants attacked Hoang for making "the unreasonable assertion
 11 that her birth date could be obtained from no source other than her credit card data and
 12 that it is therefore her belief that Defendants obtained her birth date using her credit card
 13 information...*which Defendants deny.*" (Dkt. 15 at 7:15-26 (emphasis added).)

14 Defendants also represented that Hoang made false statements by alleging "that
 15 Defendants used her credit card information to obtain her date of birth...". (Dkt. 15 at
 16 11:27-35.) Yet, IMDb *did* obtain Hoang's legal name from her payment information, and
 17 used it to uncover Hoang's birth date. (Cairella 30(b)(6) Dep. at 31:15-32:16, 36:12-16;
 18 Cairella Dep. at 46:7-47:17, 58:25-59:9, Whitcomb Dep. at 10:2-17.)

19 **F. IMDb damaged Hoang when it released her age.**

20 After IMDb publicly disclosed Hoang's age, her work slowed. (7/26/2012 Hoang
 21 Dep. 221:2-222:3.) She received half as many roles than before IMDb posted her age in
 22 2008. (8/7/2012 Hoang Dep. at 464:6-465:1; Kolkowitz Dep. at 47:14-25.) In a film
 23 called *Consequences*, for example, the casting director initially hired Hoang but then
 24 rejected her as too old after seeing Hoang's age on IMDb. (7/26/2012 Hoang Dep.
 25 196:19-198:15.) On another project, the casting director rejected Hoang because the
 26 director was "concerned about the age range". And for another film, the casting director
 27 rejected Hoang shortly after Hoang provided the director with a link to her IMDb profile.
 28 (7/26/2012 Hoang Dep. at 213:4-214:16, 216:6-218:24.) Finally, Hoang lost a role to

1 another actress whose age is not revealed on IMDb. (Hoang Decl. at ¶ 8.)

2 In addition to lost earnings, IMDb's public disclosure of Hoang's age after she
3 worked for years to keep it secret causes Hoang emotional distress. (Hoang Decl. at ¶ 18.)
4 She is seeing a therapist, and suffers from daily anxiety and sleep loss. (7/26/2012 Hoang
5 Dep. at 376:16-378:4; Hoang Decl. at ¶ 18.)

6 **G. Hoang is not IMDb's only victim.**

7 IMDb also damaged consumers other than Hoang by displaying actors' ages. For
8 example, IMDb conducted at least 24 different PrivateEye searches for actors in recent
9 history. (Cairella Dep. at Ex. 7.) IMDb enables age discrimination in Hollywood—
10 leading to the Screen Actors Guild and the American Federation of Television and Radio
11 Artists (SAG-AFTRA) repeatedly petitioning IMDb to remove birth dates upon request.
12 (Hoang Decl. at ¶¶ 19-20 , Exs. F-G.) As SAG-AFTRA entreated:

13 Screen Actors Guild and the American Federation of Television and Radio
14 Artists strongly believe that businesses like IMDb have a moral and legal
15 obligation not to facilitate age discrimination in employment.
16 Entertainment industry employers who would never directly ask a potential
17 employee's age routinely access that information through IMDb and its
18 professional subscription site IMDbPro. IMDb has the power to remove the
temptation for employers to engage in age discrimination by accessing this
information.

19 (Hoang Decl. at ¶ 19, Ex. F.) The Writer's Guild of America and Director's Guild of
20 America have also joined SAG-AFTRA in petitioning IMDb to stop its pernicious role in
21 age discrimination. (Hoang Decl. at ¶ 20, Ex. G.)

22 Numerous individual performers also routinely petition IMDb to remove their age
23 from public display and complain about IMDb's practices. (Cairella Dep. Tr. at 24:5-
24 26:2.) Actors have gone so far as to petition this Court for redress, even though they are
25 not involved in the litigation. (Scully Decl. at ¶ 2, Ex. A.) In addition to the personal
26 pleas, IMDb estimates that it has also been involved in between ten and fifteen legal
27 disputes in the last few years relating to it displaying performers' ages. (Scully Decl. at
28 Ex. H, August 1, 2012 Deposition of Adrian Garver ("Garver Dep.") 17:18-18:6.) But

IMDb continues to collect—and post—private information about its users without their consent. (Hoang Decl. at ¶ 21.) And IMDb has not made any policy change as a result of consumer complaints or this lawsuit. (Cairella Dep. at 58:10-24.)

H. Amazon.com is intimately involved in IMDb’s malfeasance.

IMDb is a wholly-owned subsidiary of Amazon.com, and Amazon directly derives revenue from IMDb’s business activities. (Cairella Dep. Tr. at 75:12-21.) Amazon advertises extensively on IMDb’s website. For example, searching for a performer on IMDb.com leads to advertising on Amazon.com to purchase movies featuring that performer. (Hoang Decl. at ¶ 26, Ex. K.) Amazon and IMDb share credit-card processing and payment systems. (Scully Decl. at Ex. I, Deposition of 30(b)(6) Representative Adrian Garver (“Garver 30(b)(6) Dep.”) at 7:12-22.)

Amazon was directly involved in IMDb’s actions regarding Hoang. Amazon provides legal counsel for IMDb, including about the privacy-policy Agreement. And Amazon legal staff provided the advice that directly led to IMDb’s misdeeds. (Garver 30(b)(6) Dep at 7:1-4; 11:10-18; Cairella Dep. Tr. at 73:11-17.) And, the IMDb employee responsible for researching and publishing Hoang’s private information admitted that he claimed to be an Amazon.com employee. (Cairella Dep. Tr. 72:2-73:5, Ex. 11.)

III. DISCUSSION

Summary judgment is appropriate upon a showing that there is “no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). All material facts alleged by the non-moving party are assumed to be true, and all inferences must be drawn in that party’s favor. *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1088 (9th Cir. 2008). A fact is “material” if its resolution will affect the outcome of the lawsuit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is “genuine” only if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* In this case, the facts are undisputed and summary judgment is appropriate. IMDb required Hoang to enter into an agreement. Under its

terms, IMDb promised not to disclose information. But IMDb did disclose the information, thereby breaching it. And since it has and will continue to breach this same agreement with other consumers, IMDb violated Washington's consumer protection act.

A. The Court should grant summary judgment on Hoang's contract claim because the facts are undisputed that IMDb agreed not to use Hoang's confidential information, but did so in violation of its agreement.

This Court should find that IMDb breached the Agreement if Hoang proves: (1) a valid contract; (2) that IMDb breached a duty provided in the contract; and (3) the breach proximately caused Hoang damage. *Northwest Mfrs. v. Dep't of Labor*, 78 Wn. App. 707, 712 (1995).

1. The Agreement is a valid contract.

The Agreement between Hoang and IMDb is a valid contract. A valid contract requires that the "parties objectively manifest their mutual assent to all material terms of the agreement." *P.E. Sys., LLC v. CPI Corp.*, 164 Wn. App. 358, 366 (2011). The Agreement provides that it "is the agreement you consented to upon subscribing to the [IMDb] site," and sets forth all material terms of IMDb and Hoang's relationship. (Hoang Decl. at Ex D-3.) Terms of service such as the Agreement are routinely enforced as contracts. E.g., *Minnick v. Clearwire US, LLC*, 683 F. Supp. 2d 1179 (2010); *Anthony v. Yahoo! Inc.*, 421 F. Supp. 2d 1257, 1260 (N.D. Cal. 2006). And IMDb acknowledged the Agreement's validity in support of their motion to dismiss. (Dkt. No. 15 at 11:30-34 (stating that "Plaintiff provided this information to IMDb.com voluntarily in exchange for the benefits of an IMDbPro subscription and, in doing so, she consented to the Subscriber Agreement and Privacy Policy."))

2. IMDb breached its duty not to disclose Hoang's personal information.

a. IMDb breached its duty by providing Hoang's personal information to PrivateEye.com.

Contracts are interpreted according to the plain, ordinary, and popular meaning of their terms. *Holden v. Farmers Ins. Co. of Wash.*, 169 Wn.2d 750, 764 (2010). Since IMDb drafted the Agreement, Hoang is entitled to the benefit of any ambiguous

provisions—which must be construed against IMDb. *Joinette v. Local 20, Hotel & Motel Rest. Employees & Bartenders Union*, 106 Wn.2d 355, 364 (1986).

The Agreement is unequivocal about how IMDb will manage personal information:

Information about our users is an important part of our business . . . [w]e share user information with our parent corporation (Amazon.com, Inc.), the subsidiaries it controls, and as described below.

. . .

Other than as set out above, you will always receive notice when information about you might go to third parties, and you will have an opportunity to choose not to share the information.

(Cairella 30(b)(6) Dep. at Ex. 3 (emphasis added).) IMDb required Hoang to disclose her credit-card information, including her real name. Only by using the confidential information that IMDb promised not to share was it able to glean Hoang's birth date from PrivateEye.com. While IMDb is allowed to disclose information for limited purposes—such as releasing it in response to a subpoena—the Agreement prohibits IMDb from sharing Hoang's personal information with a private company for the purpose of learning more confidential information about Hoang. IMDb did not have the right to share Hoang's personal information from credit-card data with PrivateEye.com for the purpose of investigating Hoang's age. But IMDb did just that.

As the First Circuit recently noted:

When a customer uses a credit card in a commercial transaction, she intends to provide that data to the merchant only. Ordinarily, a customer does not expect -- and certainly does not intend -- the merchant to allow unauthorized third-parties to access that data.

Anderson v. Hannaford Bros. Co., 659 F.3d 151, 159 (1st Cir. 2011).

Similarly, in *Claridge v. RockYou, Inc.*, 785 F. Supp. 2d 855, 864 (N.D. Cal. 2011), the Northern District of California found a contract breach where a website operator failed to use commercially reasonable efforts to safeguard its users' Facebook login information. IMDb makes the *Claridge* defendant seem innocent. There, a security breach allowed a single person to access Facebook login information. Here, IMDb

1 blatantly flouted its own terms of service and unapologetically shared Hoang's legal
 2 name and other personal information with a third party for IMDb's own benefit—and
 3 then publicly disclosed Hoang's personal information.

4
 5 **b. IMDb breached its duty not to disclose Hoang's date of birth to the public.**

6 IMDb separately had a duty not to disclose Hoang's birth date once it obtained her
 7 age from PrivateEye.com. The Agreement provides that Hoang "will always receive
 8 notice when information about you might go to third parties, and you will have an
 9 opportunity to choose not to share the information." IMDb may now argue that it did not
 10 publicize Hoang's credit card information—her real name, address, and credit card
 11 number—but instead only publicized information it derived from a PrivateEye.com
 12 search. But the Agreement is not limited to just the information that Hoang provided. It
 13 addresses "user information" which expressly includes both "Information You Give Us"
 14 and "Information from Other Sources." (Hoang Decl. at Ex D-2.)

15 Other terms in the Agreement bolster Hoang's position that IMDb was not
 16 permitted to use her data for any purpose other than to charge her credit card for services.
 17 Contracts are read as a whole, and the Court construes all terms to harmonize them with
 18 the parties' intent. *Panorama Vill. Condo. Owners Ass'n Bd. of Dirs. v. Allstate Ins. Co.*,
 19 144 Wn.2d 130, 137 (2001). The Agreement emphasizes that private information is
 20 important, stating that "IMDb knows that you care how information about you is used
 21 and shared, and we appreciate your trust that we will do so carefully and sensibly."
 22 (Cairella 30(b)(6) Dep. at Ex. 3.) It further provides that "Information about our users is
 23 an important part of our business, and we are not in the business of selling it to others."
 24 (*Id.*) IMDb also promised her that "...you can safely enter your credit card details via
 25 our secure server, which encrypts all submitted information." (Hoang Decl. at ¶ 9, Ex. D-
 26 4 at 2.)

27 When Hoang provided her legal name and other personal information to IMDb in
 28 order to purchase IMDb Pro services, IMDb was permitted only to use that information to

1 charge her credit card. IMDb breached the Agreement by using it to learn Hoang's birth
 2 date, and then it posted that confidential information on IMDb's website for all casting
 3 directors to see and use against her.

4
 5 **3. IMDb's breaches damaged Hoang's career and caused her emotional distress.**

6 Hoang need not prove substantial damage because "uncertainty as to the exact
 7 amount does not prevent recovery," and nominal damages may be awarded if the amount
 8 is slight or unquantifiable. *Wenzler & Ward Plumbing & Heating Co. v. Sellen*, 53 Wn.2d
 9 96, 100, 330 P.2d 1068 (1958); see also *Shields v. De Vries*, 70 Wn.2d 296, 300
 10 (1967)(awarding nominal damages). IMDb displaying Hoang's age damaged her acting
 11 career. Before IMDb's disclosure, Hoang had a 195% increase in her income the year
 12 after she moved to Los Angeles, and was steadily cast in more roles. (Hoang Decl ¶ 2.)
 13 But her upward trajectory stopped after IMDb posted her age. (*Id.*) She now receives half
 14 as many auditions than before IMDb disclosed her age, and her income is down. (*Id.* at ¶
 15 16.)

16 There can be no question that IMDb's disclosure, and not any other factor, caused
 17 the decrease. Hoang uses the same methods to garner roles now that she used before
 18 IMDb posted her age. (Hoang Decl. ¶ 16.) She has not suffered any other career reverses.
 19 The only variable that has changed is that she is no longer an actor of unknown age who
 20 looks young enough to play a person in her 20s. She is now a 40-year old actress
 21 automatically screened out by many casting directors for roles younger than 40.

22 Hoang also has direct evidence that IMDb's disclosure damaged her career. Hoang
 23 was initially cast in a film called *Consequences* and then rejected after the casting
 24 director looked up Hoang's age on IMDb and discarded her as too old. (7/26/2012 Hoang
 25 Dep. 196:19-198:15.) On another project, the casting director rejected Hoang because the
 26 director was "concerned about the age range", and on yet another film Hoang was
 27 rejected shortly after she provided a link to her website and IMDb profile. (7/26/2012
 28 Hoang Dep. at 213:4-214:16, 216:6-218:24.)

Further, IMDb's actions damaged Hoang by inflicting emotional distress. Hoang's lifelong dream is to be a successful actress. She almost made that dream a reality by hard work and care, including keeping her actual age a secret. IMDb's actions—done for the sole purpose of benefiting IMDb's business—cause Hoang stress, loss of sleep, and require her to see a therapist. (Hoang Decl. at ¶ 18.)

The purpose of a privacy policy like IMDb's Agreement is to protect information that consumers wish to keep confidential. When personal information is disclosed or used surreptitiously—like IMDb did to learn Hoang's birth date—the natural result is a feeling that something personal is lost. For that reason, consumers are careful about where they share information. But here, IMDb violated Hoang's trust, made her feel violated, and caused her emotional damage that cannot be repaired.

B. IMDb violated Washington's Consumer Protection Act by deceptively obtaining information from Hoang and unfairly displaying it to the public.

The Washington Consumer Protection Act exists to protect the public and foster fair and honest competition by protecting citizens from "unfair and deceptive trade and commercial practices." *Stephens v. Omni Ins. Co.*, 138 Wn. App. 151, 170-71 (2007); *Michael v. Mosquera-Lacy*, 140 Wn. App. 139, 151 (2007). It "broadly attacks unfair or deceptive acts or practices in the conduct of any trade or commerce." *Stephens*, 138 Wn. App. at 169-170. The CPA is "liberally construed [so that] its beneficial purposes may be served." RCW 19.86.920.

The CPA is violated when:

- (1) there is an unfair or deceptive act or practice
- (2) in trade or commerce
- (3) that affects the public interest, and
- (4) causes injury to the plaintiff that is a result of the unfair or deceptive act.

RCW 19.86.020; *Walker v. Wenatchee Valley Truck & Auto Outlet, Inc.*, 155 Wn. App. 199, 207 (2010) (citing *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 784-85 (1986)).

1 **1. IMDb's actions are both unfair and deceptive.**

2
3 **a. IMDb's promise to keep Hoang's information private was**
4 **deceptive.**

5 A communication is deceptive if it "had the capacity to deceive a substantial
6 portion of the public." *Sing v. John L. Scott, Inc.*, 134 Wn.2d 24, 30 (1997). The purpose
7 of the "capacity-to-deceive test" is to "deter deceptive conduct before injury occurs." *Id.*
8 A communication can be accurate and still be deceptive if the "net impression" it
9 conveys is deceptive. *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 50 (2009)
10 (quoting *Fed. Trade Comm'n v. Cyberspace.com LLC*, 453 F.3d 1196, 1200 (9th Cir.
2006)).

11 IMDb's privacy policy has the capacity to deceive. The Agreement unequivocally
12 states that an IMDb user "will always receive notice when information about you might
13 go to third parties, and you will have an opportunity to choose not to share the
14 information." (Cairella 30(b)(6) Dep. at Ex. 3.) It repeatedly emphasizes that IMDb will
15 safeguard personal information. IMDb may argue that it only intended to safeguard
16 Hoang's credit card and other financial information. But the Agreement is broadly
17 worded: it includes all "user information," which expressly includes both "Information
18 You Give Us" and "Information from Other Sources." (Cairella 30(b)(6) Dep. at Ex. 3.)

19 A reasonable consumer would assume that IMDb meant what it said: all personal
20 information, not just credit card data, would be kept secret, and Hoang could control what
21 was released. Moreover, even if the Agreement was restricted to the information that
22 Hoang provided, and not information IMDb learned from third parties based on Hoang's
23 personal details, the Agreement stated that IMDb would not share Hoang's information
24 with any party.

25 IMDb published its Agreement to the public promising that each consumer who
26 submitted information had the option to keep personal information private. IMDb further
27 promised that each consumer would have the ability to choose not to allow third parties
28 to see information submitted. And IMDb promised it would safeguard credit-card

1 information. Based on these representations, Hoang and other consumers submitted
 2 confidential information in trust to IMDb. But IMDb took the information Hoang
 3 provided and used it to locate and release to the public Hoang's age—even though Hoang
 4 repeatedly told IMDb that her real age was confidential. Since Hoang and other
 5 consumers believed IMDb's promises, IMDb's communication had the capacity to, and
 6 actually did, deceive.

7
 8 **b. Using Hoang's personal information to reveal Hoang's birth date is unfair.**

9 IMDb is separately liable to Hoang because IMDb unfairly used her personal
 10 information to perform a paid public-records search. Even non-deceptive conduct violates
 11 the CPA if it is unfair. RCW 19.86.020; *Ivan's Tire Serv. Store v. Goodyear Tire &*
 12 *Rubber Co.*, 10 Wn. App. 110 (1973). In *Ivan's Tire*, a tire distributor obtained a tire
 13 store's customer list as part of its business relationship with the tire store. The distributor
 14 then used the customer list to directly compete with the tire store by targeting its
 15 customers. The Washington Court of Appeals held that even though there was no
 16 deception and it was not unfair for the distributor to compete with the tire store, the use of
 17 the customer list might be an unfair practice because the distributor obtained it through its
 18 business relationship with the store.

19 Here, like *Ivan's Tire*, IMDb obtained Hoang's legal name for a legitimate
 20 business purpose: charging her credit card for IMDb Pro services. But IMDb then
 21 unfairly used that information for its own purposes, despite knowing that Hoang objected.
 22 IMDb did not act fairly when it surreptitiously used Hoang's private information to gain
 23 additional private information for public disclosure.

24 IMDb compounded its unfair practices by violating PrivateEye.com's terms of
 25 service. PrivateEye.com is a research tool into private information. It expressly limits
 26 IMDb's dissemination of information from PrivateEye.com, providing that "You agree
 27 that you are only authorized to visit, view, and retain a copy of pages of this Site for your
 28 own personal use . . . you shall not duplicate, download, publish, modify, or otherwise

1 distribute the material on this Site for any commercial use[.]” (Hoang Decl. at Ex. H.)
 2 IMDb’s actions—taking Hoang’s private consumer information from her, and then
 3 breaching a contract with PrivateEye.com by displaying Hoang’s private information for
 4 IMDb’s commercial gain—are exactly the types of unfair practices forbidden by the
 5 CPA.

6 **2. The unfair and deceptive acts occurred in trade or commerce.**

7 “Trade or commerce” includes “the sale of assets or services, and any commerce
 8 directly or indirectly affecting the people of the state of Washington.” RCW
 9 19.86.010(2). Because IMDb received Hoang’s information through selling her IMDb
 10 Pro’s services, and displayed it on IMDb’s commercial website, IMDb’s actions are in
 11 trade or commerce.

12 **3. IMDb’s unfair and deceptive acts affect the public interest.**

13 The likelihood that additional plaintiffs “have been or will be injured in exactly
 14 the same fashion changes a factual pattern from a private dispute into one that affects the
 15 public interest.” *Michael v. Mosquera-Lacy*, 140 Wn. App. at 152. For a consumer
 16 dispute, the Court applies the following nonexclusive factors to determine if the public
 17 interest is impacted:

- 18 • Were the alleged acts committed in the course of defendant’s business?
- 19 • Are the acts part of a pattern or generalized course of conduct?
- 20 • Were repeated acts committed prior to the act involving plaintiff?
- 21 • Is there a real and substantial potential for repetition of defendant’s conduct
- 22 after the act involving plaintiff?
- 23 • If the act complained of involved a single transaction, were many consumers
- 24 affected or likely to be affected by it?

25 *Hangman Ridge*, 105 Wn.2d at 790. Hoang does not need to prove that others
 26 have already been harmed in the same manner; acts that are capable of repetition meet the
 27 public interest element. *Stephens v. Omni Ins. Co.*, 138 Wn. App. 151 (2007)(debt
 28 collection notices).

IMDb committed its deceptive and unfair acts in connection with its business. It

1 required countless consumers to agree to the privacy-policy Agreement, making the
 2 deceptive statements part of a pattern and generalized course of conduct. IMDb used
 3 Hoang's private information to surreptitiously search for her birth date, and IMDb admits
 4 it conducted similar searches about other consumers. (Cairella 30(b)(6) Dep. at 40:24-
 5 41:1.)

6 There can be little doubt that IMDb's actions will be repeated in a way that affects
 7 the public. IMDb has a massive impact on Hollywood: it is the primary information
 8 source for casting directors. Before IMDb, an actor could control the release of their age,
 9 and casting directors had to rely on how an actor looked to determine what range they
 10 could effectively play. Now, casting directors can arbitrarily and discriminatorily reject
 11 actors based on their actual age simply by checking IMDb.

12 And IMDb shows every indication that it will continue to deceptively lure
 13 information from users and then unfairly post it: IMDb recently ran 24 PrivateEye
 14 searches on other actors besides Hoang. It refuses to take down information on request,
 15 regardless of where the information came from or how unfair the data collection methods.
 16 It has repeatedly refused to respond to entreaties from individual actors and the Screen
 17 Actors' Guild to modify its unfair practices. And it unfairly, and inexplicably, researches
 18 and publishes some actors' ages but not others.

19 **4. IMDb's unfair and deceptive acts caused Hoang injury.**

20 IMDb published Hoang's birth date that IMDb obtained surreptitiously by using
 21 Hoang's private credit-card data. IMDb did this after promising Hoang in a consumer
 22 agreement that it would not disclose or use that information. Consequently, Hoang lost
 23 acting jobs and suffered emotional distress. Thus, IMDb's unfair and deceptive acts
 24 caused Hoang injury.

25 **C. Amazon.com is liable for IMDb's misdeeds.**

26 A parent corporation is liable for the acts of its subsidiary where the parent
 27 corporation overtly disregards the subsidiary's separate corporate existence. *Minton v.*
 28 *Ralston Purina Co.*, 146 Wn.2d 385, 398 (2002). In other words, the corporate veil

1 should be pierced where “the corporate entity has been disregarded by the principals
2 themselves so that there is such a unity of ownership and interest that the separateness of
3 the corporation has ceased to exist.” *Grayson v. Nordic Constr. Co.*, 92 Wn.2d 548, 553
4 (1979).

5 IMDb is a wholly-owned subsidiary of Amazon.com, and Amazon directly derives
6 revenue from IMDb’s business activities. (Cairella Dep. Tr. at 75:12-21.) Amazon and
7 IMDb share credit-card processing and payment systems. (Garver 30(b)(6) Dep. at 7:12-
8 22.) The IMDb employee responsible for researching and publishing Hoang’s private
9 information admits that he was an Amazon.com employee. (Cairella Dep. 72:2-73:5, Ex.
10 11.) Further, Amazon provides legal counsel for IMDb, including about the privacy-
11 policy Agreement. And Amazon legal staff provided the advice that led to IMDb’s
12 misdeeds. (Garver 30(b)(6) Dep at 7:1-4; 11:10-18; Cairella Dep. at 73:11-17.) Amazon
13 has disregarded IMDb’s separate existence, and Amazon is therefore liable for IMDb’s
14 actions.

15
16 **D. This Court should find for Hoang on liability, enter injunctive relief, and
allow a jury to decide the amount of damages.**

17 This Court should enter a permanent injunction requiring IMDb to remove her age
18 because Hoang has proven that: (1) she suffered an irreparable injury; (2) remedies
19 available at law, such as monetary damages, are inadequate to compensate for that injury;
20 (3) considering the balance of hardships between the plaintiff and defendant, a remedy in
21 equity is warranted; and (4) the public interest would not be disserved by a permanent
22 injunction. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

23 Nothing other than injunctive relief requiring IMDb to remove Hoang’s age can
24 redress the ongoing harm Hoang suffers. IMDb is not harmed by removing Hoang’s age.
25 It already displays acting profiles without birth dates or ages. And the public—especially
26 working actors—benefit by reducing invidious age discrimination.

27 Hoang is also entitled to summary judgment regarding her breach of contract and
28 CPA claims, but acknowledges that factual issues remain about the specific damage

1 amount. Hoang requests that the Court enter judgment against IMDb and Amazon,
 2 including injunctive relief requiring IMDb to immediately remove Hoang's birth date and
 3 age, and allow a jury to determine the specific damage amount.

4 **IV. CONCLUSION**

5 IMDb promised to keep Hoang's personal information private. But rather than
 6 keeping it private, IMDb first conducted a surreptitious investigation into Hoang's age by
 7 using her private credit card information. IMDb shared the information with
 8 PrivateEye.com, and then broadcast her age to the world on IMDb's website. IMDb's
 9 unfair and deceptive actions violate the Agreement between Hoang and IMDb, and
 10 Washington's Consumer Protection Act. Thus, the Court should grant summary judgment
 11 in Hoang's favor and issue a permanent injunction requiring IMDb to remove Hoang's
 12 age from its public database.

13
 14 Dated this 10th day of December, 2012.

15
 16 Respectfully Submitted,

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